

**NORTH CAROLINA  
DURHAM COUNTY**

**CONTRACT**

**THIS CONTRACT**, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **MONTCLAIR, LLC** (hereinafter the "Developer") and the **CITY OF DURHAM**, a North Carolina municipal corporation (hereinafter the "City");

**WHEREAS**, the Developer proposes to extend City sewer and install a pump station to serve future development near Barbee Chapel Road, located west of the intersection of Barbee Chapel Road and Farrington Mill Road, further described as PIN 0707-01-27-6489.

**WHEREAS**, the Developer has agreed to pay certain costs associated with the proposed extension;

**WHEREAS**, at its meeting held \_\_\_\_\_, 20\_\_, the City Council of the City authorized that proposed extension pursuant to a proposed agreement with the Developer according to the terms hereinafter set forth;

**NOW THEREFORE**, in consideration of ten dollars and other valuable consideration, the receipt of which is hereby acknowledged, the Developer and the City, and the heirs, successors, and assigns of each of them agree:

The Standard Provisions shown on the attached Appendix A and B and Additional Provisions shall apply.

**IN TESTIMONY WHEREOF**, the parties hereto have executed this Contract in triplicate originals, as of the day and year first above written.

## **APPENDIX A - STANDARD PROVISIONS FOR WATER AND/OR SEWER EXTENSION CONTRACTS**

1. The Developer shall engage a registered professional engineer to prepare plans and specifications for the construction of all of the following required to serve the Project.

- ☒ public streets
- ☒ water improvements
- ☒ sanitary sewer improvements

2. Unless otherwise provided in this Contract, all construction shall be in accordance with City policy, standards, and specifications. All work shall be subject to inspection by the City. Inspection shall be provided according to City policy.

The Developer's engineer shall provide construction stakeout and project administration.

3. All construction shall be performed by a contractor licensed to perform this type of work in the State of North Carolina. The contractor must be approved by the City before a Contract is entered into between the Developer and the contractor.

4. Before starting construction, the Developer shall secure approval of the construction plans by the following:

- ☒ the City
- ☐ the County of Durham
- ☒ the N. C. Department of Transportation
- ☒ the N. C. Department of Environment and Natural Resources

5. The Developer shall furnish the City original tracings of the as-built plans when the work is complete.

6. Unless a plat showing dedication to the public of street right-of-way and of the water and/or sewer easements required to serve the Project is already recorded in the Durham County Registry or unless existing public streets are officially maintained by NCDOT, the Developer shall see to such recording before the City shall assume maintenance of any water and/or sewer facilities constructed pursuant to this Contract. Once such a plat has been recorded in a form acceptable to the City and construction of the water and/or sewer facilities has been properly completed, the City shall assume maintenance of those facilities. If defects in workmanship or materials are discovered within one year of the date of acceptance, in work done pursuant to this Contract by or for the Developer, the Developer shall see that such defects are promptly corrected at Developer's expense.

7. If sewer service is proposed to be provided by Durham County to serve the Project, then sewer service both to and within the Project shall be provided in accordance with an agreement made between the Developer and the County of Durham.

8. All streets within the Project are to be constructed in accordance with City standards and specifications. The street right-of-way width and pavement width shall be approved by the City. Curb and gutter shall be provided where required by the City.

9. For any streets that are not constructed by the State but are constructed with strip pavement, the Developer must pay the City prior to the City providing water and/or sewer service to that phase of the Project a sum equal to \$7.00 per linear foot of strip paved street for those strip paved streets that are inside the City limits and \$5.50 per linear foot of strip paved street for those strip paved streets that are outside the City limits.

10. The Developer shall comply with all of the City's storm drainage requirements and regulations and shall prepare and implement a storm drainage plan for the entire Project. No such plan shall be valid unless it is approved by the City.

11. The City shall designate the size and type of material for all water and/or sewer lines required to serve the Project.

12. The Developer shall bear the total cost of all water and/or sewer line construction within the Project and the total cost of all water and/or sewer line construction required to extend service to the project. Unless otherwise explicitly and specifically stated, the Developer shall bear the costs and expenses of all the obligations and duties created by this Contract.

13. The City may make extensions from any of the water and/or sewer lines covered in this Contract without permission of the Developer.

14. If applicable, water and/or sewer charges will be made at the outside rate to customers connecting to the lines.

15. Charges will be made according to City policy for water and/or sewer connections to the water and/or sewer lines installed pursuant to this Contract that serve property not owned by the Developer.

16. The Developer extending the water and/or sewer facilities pursuant to this Contract shall furnish information as to the actual cost of construction to the City within 30 days after notice of acceptance of the facilities by the City. Failure to provide this information will result in forfeiture of all rights to refunds which would have been received according to other provisions of this Contract.

17. The City has adopted a schedule of "Capital Facility Fees" to be paid to the City for the privilege of connecting to the City's water and/or sewer systems. Nothing in this contract shall be construed to change anyone's obligations to pay these fees.

18. The City will not be responsible for the quantity or pressure of water serving the Project.

19. Water and/or sewer services shall be installed by the Developer, including the meter box and the meter yoke. The water meter shall be installed by the City at the prevailing charge, which shall be borne by the Developer.

20. The City may require any testing it deems appropriate to determine that the work complies with City standards and specifications. All such testing shall be at the Developer's expense.

21. The words "line" and "lines" shall include "main" or "mains" unless the context otherwise requires. "Sewer" means "sanitary sewer."

22. "Water and/or sewer" shall mean "water" if "City water" is indicated in the first "Whereas" clause of this contract. "Water and/or sewer" shall mean "Sewer" if "City sewer" or "County sewer" is indicated in that clause. "Water and/or sewer" shall mean "water and sewer" if "City water" and either "City sewer" or "County sewer" is indicated in that clause.

23. This contract will be deemed made in and will be construed in accordance with the law of North Carolina. All litigation arising out of this contract will be brought in courts sitting in North Carolina.

24. This contract creates no obligation, express or implied, by the City to: reserve any wastewater treatment capacity at any present or future wastewater treatment plant or any water treatment capacity at any present or future water treatment plant; or to construct or otherwise provide any new or additional wastewater treatment plant or capacity, or water treatment plant or capacity. Notwithstanding any express or implied provision(s) to the contrary in this Contract, in the event that the City declares a water and/or sewer shortage, the City may, among other things, withhold approval of: permits for extension of sewer and/or water lines associated with the development; building permits; and/or individual utility connections to structures within the development, and may deny connections or use of already permitted utility lines. If a water and/or sewer shortage is declared, it shall be implemented through written policy, resolution, or ordinance that restricts similarly situated new developments and/or unserved properties in such new developments in a uniform manner.

25. Thoroughfare improvements (including right-of-way) dedications may be credited against road impact fees in accordance with City policy at the time of construction.

26. The City may terminate this contract if the Developer does not both (1) begin construction on all "Permitted Lines" within nine months from the date of the permits and (2) continue said construction expeditiously, with adequate forces, and in good faith with the intent of completing construction promptly. For purposes of this section, the City Engineer shall determine whether the Developer continues said construction expeditiously, with adequate forces, and in good faith with the intent of completing construction promptly. The termination shall be effective one month after the City gives notice to the Developer at its last-known address of its intent to terminate. If the City Engineer, in his discretion, is satisfied that the Developer has, during the month after the giving of that notice, promptly begun construction on all Permitted Lines and is continuing said construction expeditiously, with adequate forces, and in good faith with the intent of completing construction promptly, he may suspend the running of that month, but if the Engineer thereafter finds that the Developer is not continuing said construction expeditiously, with adequate forces, and in good faith with the intent of completing construction promptly, the Engineer may end the suspension by sending notice to the Developer at its last-known address. DEFINITIONS: In this section, "Permitted Lines" means the following: (a) water lines if the first Whereas clause of this contract indicates water; (b) sewer lines if that clause indicates sewer and (c) water and sewer lines if that clause indicates water and sewer; "Construction" means actual installation of the Permitted Lines.

27. **NONDISCRIMINATION POLICY.** The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

28. This Contract is intended for the benefit of the City and Developer and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Contract.

29. Nothing contained in this contract shall be deemed or construed to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

[END OF TEXT – APPENDIX A]

## **APPENDIX B - ANNEXATION PROVISIONS**

1. The Developer shall not seek any approvals from any governing unit other than the City of Durham for final plats that would allow the sale of lots in the Project. Final plat approval will not be given by the City until the Project is annexed. The Developer shall also ensure that no building permit is requested from any governing unit other than the City of Durham for any building in the Project. Within 30 days of the beginning date of this contract, the Developer shall submit a valid annexation petition for the Project and other necessary supporting documents to the City and shall ensure that the validity of the petition is maintained until the City Council gives final approval or disapproval to the annexation.

A valid annexation petition shall consist of a petition signed by all owners of the Project that meets the requirements of State law for petitioned annexation for contiguous or noncontiguous areas, whichever is applicable. Necessary supporting documents shall include a certificate of title for the portion of the Project being annexed, current as of the date of submittal to the City, a metes and bounds description of the Project, a map of the Project that corresponds to the metes and bounds description of the Project, and any other information specifically requested by the City. The Developer shall submit the petition, the map, the legal description and other supporting documents in a timely manner.

2. The City may terminate water and/or sewer service or refuse to provide such service to any part of the Project, and may cancel or refuse permits to construct water and/or sewer lines to any part of the Project if the Developer does not comply with the annexation provisions of this agreement. In addition, if, in violation of this Agreement, any building in the Project receives a building permit from a unit of government other than the City of Durham, the Developer shall pay to the City an amount that is equivalent to the total of (1) the impact fees that would have been received by the City for such lot and building and (2) City taxes from the time of final plat approval to the time of annexation by the City. The Developer shall pay this amount prior to receipt of water and sewer service to such building, or at the time the annexation petition is submitted that includes such building, whichever comes first. In addition, if a building in the Project receives a building permit from a unit of government other than the City of Durham, the Developer shall comply with any City request to file restrictive covenants governing the Project that ensure compliance with the annexation provisions of this Agreement. Those covenants shall be in form and in substance acceptable to the City. Enumeration of these remedies does not limit the remedies that may be available to the City for noncompliance with the annexation requirements or for noncompliance with any other provision of this Agreement.

## **ADDITIONAL PROVISIONS**

1. Water service shall be provided by connecting to the existing 8-inch waterline in Barbee Chapel Road and/or Farrington Mill Road. Water lines shall be sized and designed to meet City design standards, loop feed requirements, fire flow requirements, and system needs (with a second feed required prior to exceeding the 100th Certificate of Occupancy.) The Developer shall bear the cost of all water line construction and there shall be no participation in the cost by the City. The Developer shall extend water lines through the Project to its boundaries as directed by the City to allow for future extension. The City shall determine all water line sizes.
2. Sewer service shall be provided by construction of a public sanitary sewer lift station on site, with gravity sanitary sewer lines and a force main. The size, location, and service area requirements shall be determined by the City of Durham. The Developer shall bear the cost of all sewer line construction and there shall be no participation in the cost. The Developer shall extend sewer and easements through the Project to its boundaries as directed by the City to allow for future extensions. The Developer shall acquire all offsite sewer easements; however, the City may acquire any easement that the Developer cannot acquire. Such acquisition shall be at the Developer's expense including reasonable attorney fees and all other litigation expenses and costs.
3. The City will make refunds to the Developer for connections made by adjacent property owners to the City street sewer lines serving property not being developed by the Developer. These refunds will be made to the Developer for a period of ten (10) years after the completion of the water line. After ten (10) years have expired, charges made for connecting to the water lines will not be refunded to the Developer. These refunds will be in an amount equal to the frontage charge collected, not to exceed one-half the average cost to the Developer per linear foot of pipeline installed.
4. The Developer shall pay frontage charges at the prevailing rate to the City for any street frontages within or adjacent to the Project where the Developer does not install a City water or sewer line. These frontage charges shall be paid to the City prior to the time that the Project water or sewer lines are constructed.
5. The Developer shall make transportation improvements as directed by NCDOT and/or the City, at no cost to NCDOT or the City. If damages occur to streets, the Developer may be required to repair or resurface all or a portion of the damaged streets.

**Montclair, LLC**

By: \_\_\_\_\_  
**Manager**

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that \_\_\_\_\_ personally (1) appeared before me this day, (2) stated that he or she is a manager of \_\_\_\_\_, a limited liability company organized and existing under the laws of the State of \_\_\_\_\_, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

**ATTEST**

**CITY OF DURHAM**

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
\_\_\_\_\_  
City Manager

**NORTH CAROLINA**  
**COUNTY Of** \_\_\_\_\_

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_ personally appeared before me this day, and acknowledged that he or she is the \_\_\_\_\_ City Clerk of the **CITY OF DURHAM**, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its \_\_\_\_\_ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_